HON'BLE MR. JUSTICE BILAL NAZKI
HON'BLE MR. JUSTICE C.V. RAMULU
AND
HON'BLE MR. JUSTICE D. APPA RAO

WP NOs. 4214 of 2006, 15318 of 2005, 7483 of 2005, 23323 of 2004, 3671 of 2005, 8049 of 2004, 5258 of 2003, 17593 of 2005 and 17286 of 2006

Dt. 28.12.2006

WP NO. 4214 OF 2006 AND BATCH

Between:

Kakinada Education Society, Kakinada

…Petitioner

and

Kakinada Muncipal Corporation

…Respondent

HON'BLE MR. JUSTICE BILAL NAZKI
HON'BLE MR. JUSTICE C.V. RAMULU
AND
HON'BLE MR. JUSTICE D. APPA RAO

WP NOs. 4214 of 2006, 15318 of 2005, 7483 of 2005, 23323 of 2004, 3671 of 2005, 8049 of 2004, 5258 of 2003, 17593 of 2005 and 17286 of 2006

COMMON ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties. These writ petitions have been filed challenging the notices issued to

the petitioners demanding tax under the A.P. Municipalities Act, 1965 (for short “the Act”) and all the petitioners’ institutions are educational institutions and they have challenged the impugned notices on the ground that they are exempt from paying municipal tax in terms of Section 88 of the Act.

When these cases came up before a Division Bench, it took notice of a judgment reported in *Vasishta E.M. School, Madanapalle Vs. Basinikonda Gram Panchayat, Basinikonda and another* [1]. It was contended before the Court that Rule 5 of the Rules framed under the A.P. Panchayat Raj Act, 1995 was para materia to Section 88 of the A.P. Municipalities Act, 1965, therefore the interpretation placed by this Court on Rule 5 framed under the A.P. Panchayat Raj Act, 1995 should also be placed on Section 88 (1) (c) of the A.P. Municipalities Act. This necessitates a reference and in this way the matters have come up before the Full Bench.

Under Section 85 of the A.P. Municipalities Act the Municipality has been empowered to levy tax and section 88 is a provision which grants certain exemptions. The relevant clause for the purpose of the present controversy is sub-section (1) (c) of Section 88 which lays down,

> “recognized educational institutions including hostels, public buildings and places used for the charitable purpose of sheltering destitute or animals and libraries and playgrounds which are open to the public”

This sub-section was redrafted in 1994 by Act 3 of 1994. There was a sub-section (bb) to Section 88 of the Act which was deleted subsequently. Sub-section (bb) was in the following terms,

> "Educational institutions upto 10th class, the buildings of which are donated by charitable institutions or Philanthropists, or which are depending on the grant-in-aid by the government for the maintenance and such other educational institutions which are not running purely on commercial lines, but serving the cause of primary education which the Government may consider from time to time."

Sub-section (c) before the amendment was in the following terms,

> "buildings used for hostels, public buildings and places used for the charitable purpose of sheltering the destitute or animals, and libraries and playgrounds which are open to the public."

The redrafting of sub-section (c) and deletion of sub-section (bb) would also be a pointer for coming to the correct interpretation of sub-section (c).

Mr. C.Kodanda Ram, learned counsel appearing for the petitioners submits that sub-section (c) can be interpreted to mean that all recognized educational institutions are exempt from tax under Section 85 of the

Act. He places emphasis on the word “and” before ‘places’ and after ‘buildings’ to give such an interpretation. But, in our view, the most important word in the whole sub-section is the word “including” before ‘hostels’ and after ‘institutions’. If the word “including” is read along with the word “and”, which is found in between ‘places’ and ‘buildings’, it becomes crystal clear that recognized educational institutions shall be exempt from tax where the educational institutions which included hostels, public buildings and places used for the charitable purpose or for the purpose of sheltering destitute or animals and libraries and playgrounds which are open to the public. There was no need for the legislature to use the word “including”, if the intention of the legislature was to exempt all the educational institutions. Therefore, in our view, all the recognized educational institutions including hostels, public buildings and places used for charitable purposes are exempt under Section 85 of the Act provided those institutions, hostels, public buildings and places are used for charitable purposes. That the charitable purpose is necessary only for the places other than recognized institutions as suggested by Mr. C. Kondanda Ram, learned counsel, is, according to us, not correct view. However, it will always be a question of fact whether a particular institution is charitable institution or not. Therefore, while answering the reference in the terms as mentioned hereinabove, we make it clear that we have

not gone into the question as to whether the petitioners' institutions are charitable institutions or not.

Therefore, with the consent of the learned counsel for the parties, we dispose of the writ petitions as well with an observation that before levying of the tax on the petitioners' institutions, the authorities concerned should address to the question as to whether the institutions are charitable institutions or not and for such purpose the petitioners are at liberty to make representations to the concerned authorities within one month and after considering such representations, the authorities may pass appropriate orders since at no point of time the authorities have considered whether the petitioners' institutions are charitable institutions or not. Therefore, we are passing such orders to enable the authorities to pass fresh orders after considering the submissions of the petitioners. We are also quashing the impugned notices. The respondents shall be at liberty to raise fresh claims, if any, after hearing the petitioners and deciding their claim that they are charitable institutions.

It is also contended by Mr. C. Kondanda Ram, learned counsel that in the previous assessment the procedure laid down by the law was not followed. We are not going into that question since we have quashed the impugned notices, but we direct that for future assessment, the procedure laid down by the Act and Rules shall be followed. If the parties had not approached

within one month from the date of receipt of copies of this order, the respondents may pass appropriate orders.

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BNJ

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CVRJ

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DARJ

Dt. 28.12.2006

N.B:
Registry to put up copies of this order in each bundle.
(B/o)
KR

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[1] 1996 (2) The Law Summary 13